IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 264 OF 1999.

1. Association of Assistant
   Engineers of Electricity
   Department of Government
   of Goa, Margao, Goa.

2. Shri A.D.P. Verlekar,
   Assistant Engineer (Electrical),
   Office of Chief Electrical
   Engineer, Panaji, Goa.

3. Shri C.H. Rajagopalan,
   Assistant Engineer (Electrical),
   Sub-Division III, Bambolim, Goa. ... Petitioners.

VERSUS

1. The State of Goa,
   (Through the Chief Secretary
   to the Government of Goa,
   having his office at
   Secretariat, Panaji, Goa).

2. Secretary (Finance),
   Government of Goa,
   Secretariat, Panaji, Goa.

3. The Chief Electrical Engineer,
   Government of Goa,
   Vidyut Bhavan, 3rd Floor,
   Panaji, Goa. ... Respondents.

Mr. S.K. Kakodkar, Senior Advocate with Mr. J.P. De Souza, Advocate for the Petitioners.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.R. Bharne, Government Advocate for the Respondents.

CORAM: N.N. MHATRE &
P.V. HARDAS, JJ.

DATE OF RESERVING THE JUDGMENT : 12.1.2004.

DATE OF PRONOUNCING THE JUDGMENT: 19.1.2004.

J U D G M E N T: **(PER SMT. MHATRE, J.)**

By this petition the petitioners who are

Assistant Engineers in the Electricity Department seek re-fixation of their pay scales in the scale of Rs.8000-13500 with effect from 1st January, 1996. The facts giving rise to the petition are as follows :-

The Fourth Pay Commission's recommendations were accepted by the Government with effect from 1st January, 1986. On 31st July, 1996 the Government revised the pay scales of the post of Assistant Engineers in the Electricity Department from Rs.2200 to Rs.4000. This revision was made in order to maintain parity with the Secretariat Staff and others. However, the upgradation was a temporary measure pending decision on the basis of the Fifth Central Pay Commission Report. It was clearly mentioned in this order that the revision was only a temporary measure pending the decision in respect of Fifth Pay Commission and granting of pay scales under the Fifth Pay Commission would be with reference to the pay scales as recommended by the Fourth Pay Commission and not the interim revised scales. On 27th October, 1997 the Government accepted and implemented the recommendations made by the Fifth Pay Commission with certain modifications. It was made clear by this order also that the interim revision was being ignored and the pay scales were fixed with reference to the Fourth Pay Commission. On 16th January, 1998 an order was issued

in respect of the Director, the Project Officer and the Deputy Director of Animal Husbandry and Veterinary Services were given revised pay scales under the Fifth Pay Commission on the basis of the interim revision granted to all Government servants by the Order of 31st July, 1996. Similar relaxation was made in respect of the Directorate of Agriculture, the Assistant Agricultural Officer, the persons in the Printing and Stationery Department and Accounts Officers. However, the petitioners were not given any such relaxation and therefore according to the petitioners there has been violation of their fundamental rights. The Order of 27th October, 1997 making the pay scales applicable with reference to the interim increase in pay scales ought to be applicable to the petitioners as well as they do not stand on a different footing from those who are given the benefit of fixation of pay with reference to the temporary increase given during the pendency of the Fifth Pay Commission. According to the petitioners there is no reason why the Government has refused to give to the post of Assistant Engineers in the Electricity Department the pay scale of Rs.8000 to Rs.13500 with effect from 1st January, 1996.

2. The submissions of the learned counsel appearing for the petitioners may be summarised as follows :-

(i) Since the 27th October, 1997 order relaxes the need for fixation of pay scales with reference to the Fourth Pay Commission, the same relaxation should be made available to the petitioners although they may be of different Departments.

(ii) Financial burden on the State or financial crunch, if such a relaxation is given to the petitioners as well, cannot be an impediment or hurdle in granting to the petitioners this benefit as their fundamental rights had been violated. Reliance is placed on the judgments of the Apex Court in the case of **Kapila Hingorani v. State of Bihar,** reported in (2003) 6 S.C.C., 1, **All India Imam Organization and others v. Union of India and others** reported in (1993) 3 S.C.C., 584, **State of H.P. v. H.P. State Recognised & Aided Schools Managing Committees and others** reported in (1995) 4 S.C.C., 507, **Municipal Council, Ratlam v. Shri Vardichan and others,** reported in (1980) 4 S.C.C., 162 and a Judgment of this Court in the case of **Vidarbha Labour Law Practitioners Association V. State of Maharashtra & Ors.** reported in 2003 (3) All M.R., 254.

(iii) If the Government decided to grant largesse or bounty to some employees, the Government's action must satisfy the test of reasonableness and

public interest. Granting of the pay scales with reference to the interim increase amounted to largesse given to the employees as per deviation from the Order of 27th October, 1997. The Government's action must not be arbitrary or irrational. To buttress this submission reliance is placed on **Ramana Dayaram Shetty v. The International Airport Authority of India and others**, reported in A.I.R. 1979 S.C., 1628 and **M/s. Kasturi Lal Lakshmi Reddy, etc. v. The State of Jammu & Kashmir and another** reported in A.I.R. 1980 S.C. 1992.

3. On behalf of the respondents, the learned Advocate General submitted that the issue involved in the Writ Petition was no longer res integra as it had already been decided with reference to the employees in the Accounts Department and Accounts cadre in Writ Petitions No.322/1998 and 138/1999. These two Writ Petitions were decided by a common judgment on 28th July, 2003 by the Division Bench of which one of us (P.V.Hardas, J.) was a party. The learned Advocate General then pointed out that by the Orders of 16th January, 1998 and other orders granting revision to certain Departments, there was no upgradation of the pay scale, but in fact the post itself had been upgraded. In view of this fact the upgraded post had a different pay scale and it is for this reason that some

of the persons in the Animal Husbandry Department, the Assistant Agricultural Officers in the Agricultural Department, the Junior Grade Officers of the Goa Civil Services, the employees of the Printing and Stationery Departments were given a higher pay scale. The revision in pay scale according to the learned Advocate General had nothing to do with the interim revision granted by the Order dated 31st July, 1997. According to the learned Advocate General since all these instances of revision granted with reference to their upgraded posts were considered in the earlier Judgment of the Division Bench consisting of Rebello & Hardas, JJ., the petitioners cannot agitate this issue any more. He also submits that there is no averment made in the petition that the petitioners and those in the above-mentioned Departments were similarly situated and therefore were entitled to pay scales as granted to them with reference to their temporary pay scales. He further submits that although financial disability and financial crunch could not be considered while considering payment of wages when there was a question of violation of fundamental rights, in the present case there was no such violation of fundamental rights as the petitioners had been paid in accordance with law. A revision in pay scales according to the learned counsel would certainly call for considering the financial condition of the employees. A further

submission was made by the learned counsel that merely because any error or anomaly had crept in by granting of such pay scales to those mentioned in the Departments above, it was not necessary to create anomalous situation by granting the petitioners the pay scales with reference to their revised pay scales which were revised as an interim measure.

4. To counter the submission of the learned Advocate General that there were no averments in the petition and that all the contentions raised were vague, the learned counsel appearing for the petitioners contended that what is obvious need not be pleaded at all. According to the learned counsel it was obvious that there was discrimination and this led to violation of Articles 14 and 16 of the Constitution.

5. We find that the Judgment of this Court in Writ Petitions No.322/1998 and 138/1999 is applicable to the facts and circumstances of this case on all fours. Propositions have been formulated by the petitioners in that Writ Petition, one of which was: Whether the Order dated 27th October, 1997 insofar as it pertains to the petitioners amounts to hostile discrimination and, as such, is violative of Article 14 of the Constitution in view of the fact that in the case of officers working in the Directorate of Animal Husbandry

and Veterinary Services and the Directorate of Agriculture, the benefits of Fifth Pay Commission have been extended with regard to the pay scales as revised after 1st January, 1986 while denying the said benefits to the petitioners. There is no doubt that the present petition also proceeds on the same footing. The learned counsel for the petitioners made vain attempts to distinguish the facts and circumstances of the present petition and submitted that the ground on which the challenge is made in the present petition is different from the propositions in the earlier petitions. We are unable to appreciate this argument. The submission of the learned counsel is that the 27th October, 1997 Order extends the benefit of the Fifth Pay Commission with reference to the revision which took place after 1st January, 1986 to only some Departments i.e. the Animal Husbandry and Veterinary Services, The Directorate of Agriculture, the Printing and Stationery Department, etc. while denying the same to the petitioners. We do not feel the case made out by the petitioners is any different from the case made out by the petitioners in the earlier Writ Petition. In fact, in the earlier Writ Petitions, two further submissions were made which were considered in those Writ Petitions namely that the 27th October, 1997 Order granting revision by ignoring the revision of pay scales subsequent to 1st January, 1986 was illegal and

arbitrary and therefore violative of Articles 14 and 16 of the Constitution.

6. The Petitioners have sought parity with the employees mentioned in the Orders dated 16th January, 1998 granting the holders of the post in the Department namely of Animal Husbandry and Veterinary Services, 11th January, 1998 granting to posts of Agricultural Officers in the Agricultural Department, 29th January, 1999 to Junior Grade Officers and 17th February, 1999 posts in the Printing and Stationery Department, granting them Fifth Pay Commission scales corresponding to the pay scales upgraded after 1st January, 1986. These orders have been considered in the earlier Writ Petitions filed by the Accountants and employees of the Directorate of Accounts. This Court has found that the Government was entitled to fix the pay scales ignoring the revision made after 1st January, 1996 and that by itself could not make the order of 27th October, 1997 arbitrary. As regards discrimination it would be useful to reproduce the observations of this Court as under :-

> " In both the petitions the persons holding posts from Accountants onwards save for the post of Director, are the petitioners. In other words, the contention is not that in the same cadre a group of employees have been given a different scale to the

exclusion of another. The argument is based on the submission, that in some other department some employees have been granted higher pay scales after 27th October, 1997. This by itself cannot be said to be arbitrary. First and foremost, the petitioners and those others not before us constitute two different classes, considering that they are in different departments and cadres. They cannot be said to be in the same class merely because they are employed by Respondent No.1. In the affidavit dated 9th March, 1999 of Shri A.S. Aras, it is pointed out that the Government had examined individual cases and issued appropriate orders. In cases of Secretariat staff, staff of the Legislative wing and Accounts staff, Government was of the view that revision for these three categories was not justified in terms of their duties and responsibilities and as the revisions had disturbed the inter se parity between the staff of Common Accounts Cadre and Secretariat and Non-Secretariat staff prevailing on 1st January, 1986. Apart from that, the stand of the respondent State is that even those revisions which were given are being re-considered. It is not for us to go into that issue at this stage as those issues are not before this Court. What emerges is that merely because the Government acted may be even arbitrarily, in some cases, does it mean that this Court can issued to the respondent State, a direction to perpetrate that illegality. Such a mandamus can never flow in a case where no arbitrariness is disclosed by the respondents in the action of the State Government. In Chandigarh Administration & Anr. vs. Jagjit Singh & Anr., (1995) 1 SCC 745, the Apex Court was considering whether the mere fact that the authority had passed a particular order in the case of another person similarly situated, can give rise to a cause of action to another similarly situated person to move the Court, for a direction for similar relief. Answering that question, the Court observed as under:-

"Generally speaking,

> the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. "

In the instant case firstly, there is no material placed on record to show that the petitioners are in the same class as those to whom revised scales were granted. The stand of the State is that those cases were reviewed and appropriate orders were issued. They are only some categories whereas in case of large number of other employees the scales remained the same. The material on record does not show circumstances under which those posts were given the revised pay scales. However, once the petitioners are not able to show that they belonged to the same class or are similarly situated as those to whom revision was granted, even if the Government has not explained how others were given revisions, it would be impossible to accept the contention on behalf of the petitioners that there has been hostile discrimination practised on them or that the action of the State is

> arbitrary. The revision granted to Secretariat staff was not considered while fixing the pay scale on 1.1.96. The revision in payscale after 1.1.86 was after Goa had become a State. The reason for revision was that the Accountant should be given the same pay scales as in the Accountant General's office. In the light of that, the second contention must also be rejected. "

7. In the present case also no attempt has been made by the petitioners to show that they are in the same class as those to whom the revised scales were granted with reference to the interim revision. The Fifth Pay Commission scales were granted with reference to the interim revision. All that has been said in the petition is that the impugned action is arbitrary, discriminatory and impairs the fundamental right guaranteed to the petitioners by Articles 14 and 16(1) of the Constitution. There is not a whisper in the present petition that the post of Assistant Engineers of the Electricity Department was upgraded just as the posts in the other Departments and therefore they were similarly situated and were entitled to the benefits granted to those persons from the Animal Husbandry and Veterinary Services Department, the Printing and Stationery Department, etc. Merely by submitting that what is obvious need not be pleaded would not, in our opinion, absolve the petitioners from their duty to make proper pleadings and lay a foundation for the contention alleging discrimination, in the petition

itself. We therefore are inclined to accept the same view as was taken in the earlier Writ Petitions.

8. The submission that the financial burden cannot be a hurdle in granting fundamental rights also cannot be accepted as we do not think that there is any violation of fundamental rights of the petitioners. The judgments cited on behalf of the petitioners in support of the proposition that the Government cannot take shelter behind financial constraints and financial burdens being cast, when fundamental rights are involved, are of no application to the facts in the present case. All those judgments were in respect of certain duties cast on the Government to make payment of wages or to carry out its welfare activities. It is in these circumstances, that the Courts have taken the view that the Government cannot plead inability or disability to bear the burden cast for payment of wages. In the present case the petitioners seek revision of pay scales which cannot be a fundamental right of the petitioners. Revision of pay scales would have to be made in consonance with the burden which would be cast on the employer. If it is only a question of payment of minimum wages or non-payment of wages at all, that the question of fundamental rights may arise. Such is not the case before us.

9. The submission made that the Government had chosen to grant largesse or bounty to certain employees of the Department of Animal Husbandry and Veterinary Services, Printing and Stationery Department, etc. also is of no consequence as the revision is with reference to the pay scales applicable after upgradation of the post and not on account of the interim revision granted pending the Fifth Pay Commission Report. Therefore the judgement cited in the case of **Ramana Dayaram Shetty and M/s. Kasturi Lal Lakshmi Reddy (supra)** are not applicable to the present case.

10. We do not think it necessary to differ from the view taken by the earlier Bench in the Judgment of 28th July, 2003. The Writ Petition is, therefore, dismissed. Rule is discharged. No order as to costs.

NISHITA MHATRE, J.

P. V. HARDAS, J.

sl.